IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17866 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TATA IRON AND STEEL COMPANY LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 17866 of 2003
MR NITIN K MEHTA for Petitioner No. 1-2
MS DHARMISHTA RAVAL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 06/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Ms. D.N. Raval, learned senior standing counsel for Central Government, waives service of notice of rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioners have challenged the order dated 4.4.2003 (Annexure K to the petition) in so far as the petitioners have not been granted interest for the delay in payment of the refund amount of Rs.1,29,985.49 inspite of the directions given by this Court on 19.12.2002 in Special Civil Application No. 9912 of 2002 which was filed by SSL Limited (Tata Metals and Strips Limited which got amalgamated with the petitioner company by order dated 21.4.2004). Since the order dated 19.12.2002 passed in the above-numbered petition already states the relevant facts, it is not necessary to set out those facts all over again. Suffice it to state that for the refund of several amounts aggregating to Rs.4,15,695.46 including the amount of Rs.1,29,985.49, the petitioners were agitating before the respondents since 4.12.1983. After several representations made by the petitioners, ultimately the Superintendent of Central Excise informed the petitioners by letter dated 16.4.1991 that on scrutiny of their application, an amount of Rs.1,29,985.49 was sanctioned.

Since even the said amount was not refunded to the petitioners, the petitioners filed Special Civil Application No.9912 of 2002 before this Court. In the order dated 19.12.2002, this Court found substance in the petitioners' grievance that there was undue delay on the part of the respondents in the repayment of the aforesaid amount of Rs.1,29,985.49 and therefore this Court noted that in the past the petitioners had given complete details with regard to the movement of certain files within the department of the respondent authorities. The petitioners had also given relevant details about the material to the respondent authorities for the purpose of scrutinising the refund claims made by the petitioners and therefore it cannot be said that the details were not supplied by the petitioners to the respondents so as to enable them to decide the petitioners' claim. This Court ultimately gave the following directions and made following observations in paragraphs 13 to 16 of the judgment :-

"13. Looking to the fact that claim to the

tune of Rs.1,29,985.49 has already been sanctioned by the Asst. Collector, Central Excise, Division -II, Surat, it would be just and proper to direct the respondent authorities to make payment of refund of Rs.1,29,985.49 along with interest thereon payable under the provisions of sec.27A of the Act.

14. In the course of the arguments it has been submitted by the learned Standing Counsel appearing for the respondent authorities that possibly some amount might be recoverable from the petitioner company at this stage. If it is so, once the order of refund has been passed, it would be open to the respondent authorities to get the same amount adjusted in accordance with law if, in fact, some amount is to be recovered from the petitioner company by the respondent authorities.

15. Looking to the fact that the petitioner company has been deprived of the amount payable to it since 1991, we direct that necessary order shall be passed for payment of the said amount within a period of one month from the date of receipt of the writ or a certified copy of this order and the amount payable to the petitioner company shall be paid within a period of two months from the date of receipt of the writ or a certified copy of this order by the respondent authorities.

16. Though at this stage the respondent authorities have been directed to pay a sum of Rs.1,29,985.49 as per decision taken by the Asst. Collector, Central Excise, Division -II, Surat, it would be open to the petitioner company to take appropriate action for recovery of the balance amount.

In view of the above directions, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs."

3. The grievance in the present petition is that although the respondents have now given refund of Rs.1,29,985.49 as per order dated 4.4.2003 (Annexure K to the petition), the respondents have not paid any amount by way of interest.

The petitioners have given following computation

of interest for the relevant periods:

Date	Amount in Rs.
1. Amount paid	4,15,695.46
2. Amount in respect of which interest claimed	1,29,985.49
3. Date of payment of such amount	04.04.03
4. Date of application for refund	04.12.83
5. Date of order of refund	04.04.03
6. Interest claimed	
a) period from date of application upto insertion of Sec.27A @15% (4.4.1983 to 26.5.1995)	2,23,717.49
b) period after insertion of Section 27A @ 15% as per notification No.32/95-Cus dated 26.5.1995 (27.5.1995 to 11.5.2001)	1,16,185.66
c) period from 12.5.01 to 13.5.02 @ 9% as per notification No.21/2001-Cus dated 11.5.01.	11,762.80
d) period from 14.5.02 till 4.4.03 (being the date of receipt of refund) @ 8% as per notification No.25/2002-Cus dated 13.5.02.	9,259.24
Total	3,60,925.19

4. On behalf of the respondents, reliance is placed on the affidavit in reply dated 15.1.2004 and it is contended that respondent No.2 had asked for certain details which were not being furnished by the petitioners and that there was delay on the part of the petitioners which was responsible for the delay in payment of the refund amount. It is further submitted that "if at all interest on refund of interest is to be allowed it can be

allowed only for the period after 26.5.1995 as the right to such interest was conferred for the first time by insertion of section 27A of Customs act, 1962 and so also section 11BB of Central Excise Act, 1944 by Finance Act, 1995 with effect from 26.5.1995."

It is lastly contended that in view of the decision of the Apex Court in Union of India v. Orient Enterprises 1998 (99) ELT 193 (SC) a writ petition praying for award of interest for earlier period not being one for enforcement of a legal right available under any statute is not maintainable.

5. We have heard Mr. Nitin Mehta, learned counsel for the petitioners and Ms. D.N. Raval, learned senior standing counsel for Central Government, for the respondent authorities.

6. As regards the allegation contained in the reply affidavit about delay on the part of the petitioners, the same cannot be countenanced for the simple reason that even while deciding the earlier petition this Court had negatived such plea and had in terms held that the details of all the claims were given by the petitioners and that the delay cannot be attributed to the petitioners.

7. As far as the second defence of the respondents is concerned, it is true that the provisions of section 27A were inserted in the Customs Act with effect from 26.5.1995. However, way back in the year 1979 a Division Bench of this Court in Vijay Textile, a partnership firm v. Union of India, 1979 ELT (J 181) held that if the Excise authorities had collected any amount without authority of law, it is just and proper that while refunding the amount they should pay interest at the rate of 12% from the date of collection of the amount in question till the date of actual repayment. In paragraphs 22 and 23 of the said judgment, this Court observed that the Central Government had used the amount during the period in question and correspondingly the petitioner was kept out of use of the said amount during the relevant period and therefore it would be just and proper that the respondent authorities should pay interest at the rate of 12% (which was appropriate rate looking to the conditions in money market) from the date of collection of the amount till the date of actual repayment.

8. In view of the above principle, there can be no doubt that the respondent authorities are liable to pay

the petitioner interest on the amount of Rs.1,29,985.49 Ps. from the date on which the amount was originally collected by the respondents (i.e. from 4.4.1983) till the date of actual repayment (i.e. 4.4.2003).

9. It is true that provisions of section 27A were inserted with effect from 26.5.1995. However, reference to the said provisions in the earlier order dated 19.12.2002 has to be read as reference to the rate of interest prescribed by the said provisions. If this Court had intended not to pay any interest for the period prior to 26.5.1995 this Court would have clearly indicated so in the judgment, while negativing the respondents' contention that there was delay on the part of the petitioners in supplying the details. In fact the period in respect of which the respondent authorities had alleged delay on the part of the petitioners also falls within the period prior to 26.5.1995 and if this Court had not intended to award any amount of interest prior to 26.5.1995 then it would have stated so while considering the allegation of delay on the part of the petitioners.

10. At this stage, we may deal with the submission made by the learned standing counsel for the revenue that what the petitioner is claiming is really interest on interest because the amount in question (i.e. Rs.1,29,985.49 ps.) was paid to the Government by way of interest and if such amount was held to be wrongly paid to the Government, the petitioner can at the most get refund of such interest amount and in absence of any statutory provision requiring the Government to pay any interest on interest, the Government cannot be required to pay any interest on interest. Since the amount of interest is already refunded, nothing further is required to be paid to be petitioner.

The submission of the learned standing counsel is not only contrary to the direction given by this Court in a petition between the same parties, but also runs counter to the principle laid down by this Court in DJ Works vs. Dy.CIT, (1992) 195 ITR 227 as reiterated by this Court in Chimanlal S Patel vs. CIT, (1994) 210 ITR 419 which decisions have been affirmed by the Hon'ble Supreme Court in CIT vs. Narendra Joshi, (2004) 2 SCC 801.

Although both the above decisions have been rendered in cases under the Income-tax Act, the principle laid down therein is applicable in cases under all taxing statutes. In the case of DJ Works (Supra), the petitioner therein succeeded in appeals before the CIT(A)

challenging the order of assessment. The Assessing Officer gave effect to the appellate order on 4.10.1988 and issued refund orders for the two assessment years. The petitioner, therefore, approached this Court seeking a direction to the Assessing Officer to pay the amount of interest as quantified till 4.10.1988 and also interest on such quantified amount for the period from 4.10.1988 onwards. The revenue contended that while at the most the assessee can be awarded interest as quantified till the date of refund (i.e. till 4.10.1988), no direction can be given for payment of interest on interest because there is no provision in the Income-tax Act for payment of interest on interest. Repelling the above contention, this Court made the following observations :-

"Section 214(1) itself recognizes in principle the liability to pay interest on the amount of tax paid in excess of the amount of assessed tax and which is retained by the Government. Interest on the excess amount is payable at the rate of 15 per cent from the first day of the year of assessment to the date of regular assessment. It would thus appear that the Legislature itself has considered it fair and reasonable to award interest on the amount paid in excess, which has been retained by the Government. We do not see any reason why the same principle should not be extended to the payment of interest which has been wrongfully withheld by the Assessing Officer or the Government. It was the duty of the Assessing Officer to ward interest on the excess amount of tax paid by the petitioner while giving effect to the appellate order and granting refund of the excess amount. If the excess tax paid cannot be retained without payment of interest, so also the interest which is payable thereon cannot be retained without payment of interest. Once the interest amount becomes due, it takes the same colour as the excess amount of tax which is refundable on regular assessment. Therefore, in our opinion, though there is no specific provision for payment of interest on the interest amount for which no order is passed at the time of passing the order of refund of the excess amount and which has been wrongfully retained, interest would be payable at the same rate at which the excess amount carries interest."

(emphasis supplied)

The above principle was reiterated in the case of Chimanlal S Patel (Supra).

In CIT vs. Narendra Doshi, (2004) 2 SCC 801, the Apex Court dismissed the Civil Appeal challenging the decision of this Court relying upon the aforesaid judgments holding that the revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do so.

11. Lastly, as regards the defence urged on behalf of the respondents on the basis of the decision of the Apex Court in Union of India v. Orient Enterprise, 1998 (99) ELT 193 (supra), that was a case where the Apex Court was dealing with a petition seeking relief of payment of interest on delayed refund of the amount so collected. The Apex Court held that at the relevant time there was no statutory right enforceable to the petitioner for interest on refund and, therefore, the writ petition was not for enforcement of any legal right enforceable to the petitioner under any statute.

The decision is clearly distinguishable because the instant petition is filed for enforcement of the direction dated 19.12.2002 of this Court issued in a writ petition in which the petitioners had sought refund of the amount in question alongwith interest thereon and this Court had allowed the petition directing the respondents to refund the amount of Rs.1,29,985.49 Ps. alongwith interest thereon. Hence the decision in Union of India v. Orient Enterprises (supra) is not applicable to the facts of the present case.

12. As far as the rate of interest is concerned, the matter is clearly covered by the rate of interest as stipulated in Section 27A for the period from 27.5.1995 onwards till the date of payment. For the period prior to 27.5.1995, i.e., period from 4.4.1983 to 26.5.1995, we are of the view that it would be reasonable to award interest at the rate of 9% per annum looking to the present market conditions.

13. Accordingly, the petition is allowed. The respondents shall pay the petitioners interest on the amount of Rs.1,29,985.49 Ps. -,

(a) at the rate of 9% per annum for the period from 4.4.1983 till 26.5.1995; and

(b) at the rate/s applicable for the relevant

period/s from 27.5.1995 till the date of payment of the refund amount, i.e., 4.4.2003.

The respondents shall pass an order computing the amount/s of interest payable for the relevant periods within one month from the receipt of the writ of this Court or a certified copy of this order and thereafter pay the amounts so quantified within one month thereafter, i.e. the amounts shall finally be paid within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.) (A.M. Kapadia, J.)

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